Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

October Term, 1994

ERIC CARLISLE MARTINSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the deference afforded the decision of the probable cause determination of a Magistrate permits a review in court to ignore specific material, factual deficiencies, when such had been specifically alleged by the defendant.

II. Whether due process of law requires that a photographic identification be conducted in a fair and nonsuggestive manner when the identification of the person whose photo shown is a material fact relied upon to obtain a search warrant.

III. Whether representing a conclusion based on assumption as if it were a fact constitutes a misstatement of fact sufficient to undermine the Magistrate's finding of probable cause.

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No.

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ERIC CARLISLE MARTINSON,

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UNITED STATES OF AMERICA,

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Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered in this matter on April 6, 1994.

OPINION BELOW

The opinion of the United States Court of Appeals for the Third Circuit dated April 6, 1994, whose judgment herein is sought

to be reviewed is not reported. The prior opinion of the United States District Court for the Eastern District of Pennsylvania is reported at 811 F. Supp. 1097 (E.D. Pa. 1993).

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on April 6, 1994. Jurisdiction of the Court of Appeals was invoked pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involved the following constitutional provisions:

1. The Fourth Amendment of the United States Constitution which provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. The Fifth Amendment of the United States Constitution which provides as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation on indictment of a Grand Jury, except in cases arising in the land and naval forces, or in the militia, which in actual service

> in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

A. Procedural History

On the basis of affidavits filed in connection with this matter, an investigation had been proceeding for some time beginning in 1989 into the alleged activities of the defendants. This investigation culminated in search and arrest warrants executed on or about March 27, 1991. Subsequent to the arrests, the search warrants referred to herein included a warrant to search the residence of the defendants and warrants to search two (2) storage lockers. Subsequent to the arrest of the defendants, the Criminal Complaint was withdrawn and an amended Indictment was filed against the defendants alleging thirty-eight (38) Counts in violation of federal criminal statutes, including, *inter alia,* Possession of Methamphetamine, Possession of Illegal Firearms, False Identification, and Money Laundering. Timely pretrial motions were filed and considered by the trial court. On January 6, 1993, pursuant to a plea bargain, petitioner Eric Martinson entered pleas to Counts 1-6, 8, 10-21, 23, 24, 25, 27, 28, 31, 32, 34, and 35-38 of the Indictment. The pleas were entered conditioned upon an agreement between the Government and Martinson that he would retain his right to pursue his pretrial motions. Thereafter, the pretrial motions of Martinson were denied by the trial court, Martinson was sentenced, and a timely Notice of Appeal was filed. Subsequent thereto, the matter was briefed and argued before the

Third Circuit Court of Appeals who filed a Memorandum Opinion dated April 6, 1994, denying the petitioner the relief sought.

B. The Evidence

Due to the procedural posture of this case, the evidence consists primarily of an eighty-five (85) page affidavit filed in support of the Government's request for a search warrant of a storage locker purportedly under the control of Martinson. The affidavit, in general, outlines numerous transactions made in the names of various parties at numerous financial institutions throughout Eastern Pennsylvania and one or two other states. Martinson contended that by enumerating a specific transaction in the Affidavit of Probable Cause, the Government was making an implicit representation to the Magistrate that one or more of the defendants whose property they sought to search was, indeed, an indivdual using that alias. Although so much is not specifically stated in the affidavit, it is clearly implied. Martinson maintains that the inclusion of such assertions in the affidavit submitted to the Magistrate, in the absence of any facts to connect those alleged transactions to Martinson, constitutes a misrepresentation of fact on the face of the affidavit, or alternatively, such transactions are irrelevant and must be discounted. Neither occurred.

Likewise, Martinson contended that the affidavit lacked a sufficient nexus between the defendants and the property to be searched. The only colorable connection of the premises to be searched and either of the defendants is the bald assertion from an anonymous source that the name in which the facility is rented is "a known alias" of one of the defendants.

Additionally, with respect to the absence of probable cause, the affidavit goes to great lengths to assert that the suspected activity of the defendants is that of money laundering and that money launderers structure transactions in such a way that the

layperson might not recognize the pattern. Hence, the affiants go into length regarding their expertise in the area of money laundering and, after reviewing all the transactions, conclude that the likely place that evidence of money laundering would be found would be a location other than the location that was the subject of this search. Martinson contended that if the affidavit made out probable cause at all, it made out probable cause to search a location which in the opinion of the Government's expert investigators was the most likely place to find evidence of money laundering.

Finally, Martinson contended that the Government's procurement of an identification of a photograph of Martinson constituted a violation of due process of law. According to the affidavit filed in support of the search warrant, the Government agents showed a photograph of Martinson to an unidentified person at one of the banks who purportedly identified the photograph as being that of a person who made one of the transactions at the bank. Other than as outlined above, there is no information whatsoever regarding the circumstances under which the identification was made. The identification in this case is critical to any finding of probable cause in that the identity of the defendant is the only link however attenuated to any of the transactions set forth in the eight-five (85) page affidavit. In view of its critical relationship to the affidavit, Martinson contended that the Government had an obligation to demonstrate in the affidavit to the Magistrate that the identification of the petitioner was accomplished in a fair and nonsuggestive way.

C. Rulings Below

The contentions raised by Martinson with respect to the nexus between the premises to be searched and Martinson and with regard to the nexus between the transactions alleged in the affidavit and Martinson were not specifically addessed in the court below. Rather, the court took the approach that this Court's decisions in

Illinois v. Gates, 462 U.S. 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983) and *United States v. Leon*, 468 U.S. 897, 82 L. Ed. 2d 677, 104 S. Ct. 3405 (1984) *effectively negates any attack* upon a search where a warrant has been obtained. The rationale apparently applied by the court below was that in view of the deference to be afforded a Magistrate where a warrant has in fact been issued, that closing specific gaps alleged to exist in the probable cause need not be a matter of concern. Rather a generalized view to the "totality of the circumstances" would suffice. Specifically the allegation of numerous transactions created a "totality of circumstances" that in the view of the courts below made up for the Government's inability to connect Martinson to those transactions, and somehow allowed the search of the premises in question. Likewise, the existence of all the transactions and perhaps Martinson's purported membership in the Warlocks made up the "totality of circumstances" which would permit the search of the locker rented to a Christine Lawson even though Christine Lawson could not, on a factual basis, be connected to the defendants.

With respect to the issues raised by the Martinson's objection to the photographic identification, both the district court and the court below, Martinson respectfully represents, misunderstood the thrust of Martinson's argument. The district court, in the first instance, ruled under the "totality of circumstances," there did not exist a very substantial likelihood of irreparable misidentification. The Court of Appeals believed that the district court appropriately applied this Court's decision in *Manson v. Brathwaite*, 432 U.S. 98, 114-117 (1977). Martinson contends that presenting evidence to the Magistrate that he was identified, where such identification is the only link between him and the balance of the allegations in the affidavit, is irreparable per se if the identification was tainted. In the absence of facts surrounding the identification, the Magistrate is not positioned to make a reasonable determination regarding the fairness of the identification procedure. Hence, failing to include the circumstances surrounding an identification makes any

reliance placed on the identification inappropriate, in that it cannot provide a substantial basis to determine the identity of Martinson. The issue as stated was not addressed by either court below.

Finally, neither court below responded in any way to the assertion that the affidavit contained allegations of transactions which necessarily *imply* involvement therein by the defendants. Martinson claimed that a close reading of the affidavit revealed that the implication of Martinson's involvement in those transactions was not factually supported. And that as such, the implication constituted a misrepresentation of a material fact as condemned by this Court in *Franks v. Delaware,* 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). Neither of the courts below made a determination as to whether or not the allegations in the affidavit were or were not material misrepresentation of fact or whether Martinson had sufficiently alleged them to be so. The issue was simply ignored.

REASONS FOR GRANTING THE WRIT

Martinson respectfully submits that the matters asserted both in the trial courts and on appeal by Martinson were of the type that required the courts, figuratively at least, to distinguish between smoke and fire. It was the contention of Martinson that the allegations set forth in the affidavit filed in support of the warrant application were really not factual at all and were nothing more than a great deal of smoke, *i.e.*, conclusion, innuendo, suspicion, but not fact. It is not the complaint of Martinson that the court considered those assertions and drew the wrong conclusion (although of course Martinson believes that to be the case). The reason that Martinson believes that this Court should intervene is because the courts below not only failed to distinguish smoke from fire, but on the basis of this Court's decisions in *Illinois v. Gates,* 462 U.S. 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983) and *United States v. Leon,* 468 U.S. 897, 82 L. Ed. 2d 677, 104 S. Ct. 3405

(1984), essentially denied responsibility for doing so, *i.e.*, it may be just smoke, but smoke is good enough.

With respect to the issue centered on probable cause, the court below essentially took the position that where a warrant has been issued upon an affidavit, it is not required to review the Magistrate's decision or, although it may recite an acknowledgement of such responsibility, it may do so in a most perfunctory manner. I believe the courts below are reading this Court's decisions to imply that a warrant is a talisman which, with or without the existence of probable cause authorizes a search, and upon proof of the existence of a warrant, only the most absurd decision by a Magistrate will be disturbed.

The other two issues raised by Martinson are likewise interrelated. Because of the relative lack of scrutiny afforded where a warrant has been obtained, Martinson respectfully suggests that particular attention must be paid to the allegations in the affidavit. The affidavit in this particular case is loaded with allegations about suspicious transactions which, indeed, make up the bulk of the affidavit. Only upon careful and detailed study can one ascertain that the Government can link very few, if any, of these transactions to the petitioner. Including them in the affidavit, Martinson submits, is an *implicit averment that they can be connected.* A Magistrate who is very often under the pressure of time would have to be brilliant beyond comprehension not to be misled. One might naively pass off the Government's misleading the Magistrate as accidental, Martinson asserts that such is most likely not the case. It is important Martinson respectfully represents, if the Fourth Amendment is to have meaning, that the allegations in an affidavit be examined to determine their nexus to the subject matter of the search. Martinson would suggest that where a defendant is contending a *Franks* violation, either directly or by implication, that a detailed review of the affidavit is required, and that the deference afforded to a Magistrate's probable cause

determination must be put on hold, at least until the court has determined that the matters asserted or implied in the affidavit are factual.

Finally, there is an issue raised by Martinson regarding the propriety of a photographic show-up when the product of such an identification is to be used for a purpose other than, or in addition to, trial. Martinson believes that due process of law requires that any identification of him be done in a fair and even-handed manner, since his constitutional right is to be invaded on the basis of the result of any identification procedure. The standard announced by the Court in *Manson v. Brathwaite, supra,* is of course directed at the situation where the claim is that an out-of-court identification might taint an in-court identification. The key in that situation is the defendant's right to confront and cross-examine any witness who might identify him so that only where the identification is irretrievably tainted, might the defendant be entitled to relief. In the circumstance present here, however, there is no cross-examination. In fact, the assertion in the affidavit that a witness identified a particular individual is itself hearsay. Martinson respectfully suggests that before a Magistrate can accept identification evidence and use that evidence as a basis for finding the existence of probable cause, he must satisfy himself *on the basis of facts alleged in the affidavit* that the identification of the defendant was procured in a fair manner.

CONCLUSION

WHEREFORE, petitioner respectfully prays that a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX A —MEMORANDUM OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT FILED APRIL 6, 1994

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-1646

UNITED STATES OF AMERICA

v.

ERIC CARLISLE MARTINSON,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
D.C. Criminal No. 92-00228-01
(Honorable Franklin S. Van Antwerpen)

Argued March 1, 1994

Before: STAPLETON and SCIRICA, *Circuit Judges*
and SMITH, *District Judge**

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* The Honorable D. Brooks Smith, United States District Judge for the Western District of Pennsylvania, sitting by designation.

Appendix A

MEMORANDUM OPINION

SCIRICA, *Circuit Judge.*

Defendant Eric Martinson was charged with numerous drug and drug related offenses and money laundering and firearms offenses in a 38-count indictment. Martinson's codefendant filed two motions to suppress evidence which Martinson joined. On January 6, 1993, Martinson entered a conditional plea under Fed. R. Crim. P. 11(a)(2), reserving the right to pursue his pre-trial suppression motions. The district court denied the motions to suppress and sentenced Martinson to a term of ten years imprisonment.

Martinson now appeals the denial of the suppression motions. We will affirm.

I.

In 1989, detectives began investigating Martinson for drug trafficking activities. Over a period of approximately two years, detectives recorded a pattern of activities believed to be drug-related, including actual drug transactions, use of false personal identification, money laundering, membership in the Warlock motorcycle gang, and positive chemical and dog-sniff tests of cash deposited in Martinson's account.

On March 18, 1992, detectives followed Martinson to a storage facility. Throughout the drive, Martinson drove in an irregular pattern, indicating counter-surveillance tactics. At the storage facility, Martinson remained at the locker for about two minutes, then headed toward the exit, but turned around when another car came in. He waited briefly and then left the facility.

Appendix A

Detectives then saw Martinson toss torn pieces of paper from his car. Detective McDonald recovered the paper, which, when pieced together, appeared to be stock certificates for Harvivalous, Inc., a company of which Eric Martinson is president and Christine Martinson is secretary. Martinson also stopped at a stock broker for about an hour, then went to a banking window at the Meridian Bank before returning to his home.

Martinson visited the storage locker again on March 21 and 22, 1993. The locker was leased to Christine Lawson, believed to be an alias of Christine Dickson, Martinson's codefendant.

Police believed Martinson was using the storage locker as well as his home to store documents relating to his money laundering. At the end of March, police obtained warrants to search the storage locker and Martinson's residence. They arrested both Martinson and Christine Dickson, and seized drugs, guns, cash, documents, and other items of property related to drug trafficking and money laundering. Martinson moved to suppress evidence obtained from the storage locker search and the search of his residence. The district court denied both motions in a 20-page memorandum opinion and order dated January 19, 1993.

On appeal, Martinson contends the district court erred in upholding the magistrate judge's findings of probable cause. Specifically, Martinson claims the magistrate judge did not have a substantial basis for finding probable cause to search the locker, probable cause to find there was a money laundering scheme, and probable cause that the locker was leased by Christine Dickson. He also claims the court erred in upholding a warrant based on the photographic show-up, and in finding the warrant was requested in good faith.

Appendix A

II.

"[A]n affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause . . . ." *Illinois v. Gates*, 462 U.S. 213, 239 (1983). Because of the nature of the probable cause determination, the United States Supreme Court has held that a magistrate judge's decision to issue a warrant deserves deference: "Reasonable minds frequently may differ on the question whether a particular affidavit establishes probable cause, and we have thus concluded that the preference for warrants is most appropriately effectuated by according 'great deference' to a magistrate's determination." *United States v. Leon*, 468 U.S. 897, 914 (1984) (citations omitted).

While recognizing that deference is not "boundless," *id.*, the Court held that unless a "magistrate abandoned his detached and neutral role, suppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause." *Id.* at 926.

In the instant case, the district court correctly afforded deference to the magistrate judge's determination that there was probable cause to search the locker and the residence. Both the magistrate judge and district court based their findings on the expert opinions of detectives and agents who had been investigating Martinson for approximately two years.[1] the affidavits were sufficiently specific — "more than a 'bear bones' affidavit," *id.* at 915 — to provide a substantial basis for the

---

1. *See United States v. Fama*, 758 F.2d 834, 838 (2d Cir. 1985) ("An agent's expert opinion is an important factor for a judge to consider in reviewing a search warrant affidavit.").

determination. The warrants and affidavits particularized the places to be searched and the items to be seized, and explained the basis for the belief that those places and items would yield the evidence.[2] Moreover, Martinson's activities over the course of the two year investigation gave authorities an objectively reasonable basis to suspect his involvement with drugs and money laundering.[3]

Martinson raises two other issues in an attempt to defeat the warrant: that it was not requested in good faith, and that the photographic show-up was subjective and unfair. We need not

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2. It is true, as Martinson stresses, that the affidavit of the government's experts included the following opinions: "While Martinson was observed within the last week for the first time entering a public storage facility, which may be used in addition to the Valley Road property for storage, the house and buildings at the Valley Road property constitute the most likely location for documents. At the Valley Road property, documents would be readily available for reference when conducting telephone transactions with the many financial institutions which Martinson has contacted. Moreover, Dickson has not been observed at the storage facility. The mailing addresses used by Martinson and Dickson are maildrops/mailboxes and are, therefore, unlikely repositories for the numerous records generated by this complex laundering/structuring scheme. . . . It is the affiants' opinion that a search of the described residences will provide additional documents that will identify other aliases and false Social Security account numbers utilized by the two subjects for the purpose of concealing other assets." Appendix 116a-117a.

Martinson argues that these opinions establish absence of probable cause to search the storage locker. We disagree. While the residence may have "constitute[d] the most likely location for documents," this does not mean there was not probable cause to believe that documents would be found in the storage locker.

3. "The fact that an innocent explanation may be consistent with the facts alleged . . . does not negate probable cause. Neither should it preclude a good faith belief in probable cause." *United States v. Fama*, 758 F.2d 834, 838 (2d Cir. 1985).

address the good faith argument any further, as we have already discussed that the officers had sufficient and reasonable belief to request the warrant.

Nor is the use of a photographic show-up enough to defeat the warrant and suppress the evidence. The district court properly applied the *Manson v. Brathwaite,* 432 U.S. 98, 114-17 (1977) factors and found that a photo spread was not required.

We conclude the magistrate judge had a substantial basis for issuing a warrant on probable cause, and the district court was correct in upholding that determination.

III.

Martinson also contends the district court erred in upholding both the finding the locker was leased by Martinson's codefendant, Christine Dickson, and the reliance on such finding in the probable cause determination.

Martinson's assertion is based on the lack of support in the affidavit for the conclusion that Dickson's "known alias" is Christine Lawson. While it is true that an affidavit must provide more than unsupported conclusions and bald assertions, *see, e.g., Illinois v. Gates,* 462 U.S. 213, 239 (1983) ("Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others."), the police and magistrate judge are also permitted to draw reasonable inferences from the evidence. *Id.* at 240. Here, there was sufficient evidence for the police to conclude that Dickson and Lawson are the same person. *See* Appendix 57a-106a (listing numerous financial transactions conducted by Dickson, using various forms of

identification and social security numbers; used driver's license with name "Kristen Ann Lawson" as identification at bank).

Moreover, the government is correct in pointing out that there was probable cause to search the locker independent of Christine Dickson's involvement. As we discussed previously, the results of the two year investigation provided the police with sufficient information to reasonably suspect the locker held documents or other evidence of drug transactions and money laundering.

We conclude the district court was correct in finding probable cause that the locker was leased by Christine Dickson and could be searched.

IV.

For these reasons, the judgment of the district court will be affirmed.

TO THE CLERK:

Please file the foregoing opinion.

s/ Scirica
Circuit Judge

DATED: Apr 6, 1994

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA FILED JANUARY 19, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CRIMINAL NO. 92-0228-01 & 02

UNITED STATES OF AMERICA
v.

ERIC C. MARTINSON,
a/k/a "Clement B. Potter,"
a/k/a "Lyle Louden,"
a/k/a "James F. Corbett,"
a/k/a "Kenneth E. Helton,"
a/k/a "Donald J. Monroe,"
a/k/a "Russell J. Harding,"
a/k/a "Joseph Steven Rafferty,"
a/k/a "Derrick A. Walton,"
a/k/a "Scott Peter Ryan,"
a/k/a "Amos W. Frye,"
a/k/a "Howard M. Johnson,"
a/k/a "Thomas Lee,"
a/k/a "Lionel K. Lawson,"
a/k/a "Abe Golden," and
CHRISTINE M. DICKSON,
a/k/a "Cheryl K. Nielson,"
a/k/a "Carol Miller,"
a/k/a "Christine Martinson,"
a/k/a "Kristen Ann Lawson,"
a/k/a "Kristen Ann Corbett,"
a/k/a Candice Ann Keiper"

Appendix B

OPINION AND ORDER

VAN ANTWERPEN, J. JANUARY 19, 1993

Defendant Christine M. Dickson has filed two Motions to Suppress in which defendant Eric C. Martinson joined.[1] The motions rely principally on the extensive Affidavits to the Search Warrants in question, although the Court did, at defendants' request, hold a brief evidentiary hearing on Wednesday, January 6, 1993 to take testimony of three law enforcement officers. Defendant Eric C. Martinson is alleged to be a member of the Warlock Motorcycle Gang. Defendants were both charged with numerous drug and drug related offenses in a major 38-count indictment. On Thursday, January 7, 1993, defendant Christine M. Dickson plead guilty to Counts 1-6, 9, 10, 11, 12, 22, 23, 24, 29, 30, 33, and 35-38. Defendant Eric C. Martinson also entered a conditional plea under Fed. R. Crim. P. 11(a) (2) to Counts 1-6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 27, 28, 31, 32, 34, and 35-38. Defendant Martinson reserved the right to pursue the pretrial suppression motions. Before we deal with the motions in detail, we shall discuss the current state of the law of search and seizure.

The well-known test to be applied in determining whether probable cause exists for the issuance of a search warrant is that of the "totality of the circumstances." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983); *Massachusetts v. Upton*, 466 U.S. 727, 732, 104 S.Ct. 2085, 2087, 80 L.Ed.2d 721

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1. Defendant Eric C. Martinson asked to do so in his Motion to Join filed October 7, 1992 and we allowed him to do so by Order of January 7, 1993. In the interests of justice, the Court also granted a substantial continuance of the original trial date and extended time for the filing of pretrial motions.

(1986). Probable cause is defined as "a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. at 238, 103 S.Ct. at 2332; *United States v. Schecter*, 717 F.2d 864, 869 (3d Cir. 1983). Moreover, in a landmark case *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), the Supreme Court stated:

> Because a Search Warrant "provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer engaged in the often competitive enterprise of ferreting out crime. . . ." we have expressed a strong preference for warrants and declared that "in a doubtful or marginal case, a search under a warrant may be sustainable where without one it would fail" . . . reasonable minds frequently may differ of the question whether a particular affidavit establishes probable cause, and we have thus concluded that the preference for warrants is most appropriately effectuated by according "great deference" to a magistrate's determination. 468 U.S. at 913-14, 104 S.Ct. at 3415-16 (citations omitted).

The Supreme Court then held in *Leon* that when officers obtain and execute a search warrant in the "good faith" belief that the warrant is valid, then the fruits of the search should not be suppressed if the search warrant is later found invalid. *Leon*, 468 U.S. at 918-25, 104 S.Ct. at 3418-21. "[O]ur good faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search

was illegal despite the magistrate's authorization." *Leon*, 468 U.S. at 922 n.23, 104 S.Ct. at 3420, n.23. The court in *Leon* went on to note four basic exceptions:

> It is clear that in some circumstances the officer will have no reasonable grounds for believing that the warrant was properly issued.
>
> Suppression therefore remains an appropriate remedy if the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth. *Franks v. Delaware*, 438 U.S. 154 (1978). The exception we recognize today will also not apply in cases where the issuing magistrate wholly abandoned his judicial role in the manner condemned in *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319 (1979); in such circumstances, no reasonably well trained officer should rely on the warrant. Nor would an officer manifest objective good faith in relying on a warrant based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Brown v. Illinois*, 422 U.S., at 610-611 (POWELL, J., concurring in part); see *Illinois v. Gates, supra*, at 263-264 (WHITE, J., concurring in judgment). Finally, depending on the circumstances of the particular case, a warrant may be so facially deficient — *i.e.*, in failing to particularize the place to be searched or the

> things to be seized — that the executing officers cannot reasonably presume it to be valid. Cf. *Massachusetts v. Sheppard, post,* at 988-991.

Leon, 468 U.S. at 923, 104 S.Ct. at 3420.

In *Maryland v. Garrison*, 480 U.S. 79, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987), the Supreme Court reaffirmed the "good faith" doctrine and held that when officers searched the wrong apartment under a search warrant, the error would not require the suppression of the evidence seized in the search because the officers' actions were objectively reasonable under the facts available to the officers at the time they acted. 480 U.S. at 88.

Leon has enjoyed wide application. In *United States v. Sager*, 743 F.2d 1261 (8th Cir. 1984), *cert. denied*, 469 U.S. 1217 (1985), the affidavit had certain defects, including stale information and a failure to establish an informant's credibility which made the existence of probable cause doubtful. Nevertheless, the court held that even though the Affidavit to the Search Warrant might be insufficient to establish probable cause, the evidence would not be suppressed. The court found that none of the *Leon* exceptions applied and that the officers "behaved themselves in an objectively reasonably fashion." 743 F.2d at 1267. *See also United States v. Malin*, 908 F.2d 163, 166 (7th Cir. 1990); *United States v. Fama*, 758 F.2d 834, 837 (2d Cir. 1985); *United States v. Thomas*, 757 F.2d 1359, 1368 (2d Cir.), *cert. denied*, 106 S.Ct. 67 (1985).

I. ORIGINAL JUNE 5, 1992 MOTION TO SUPPRESS

The original motion to suppress relates to the search of a certain storage locker #85 at the East Penn Self Storage facility in

Emmaus, Pennsylvania.[2] The search warrant is based on the sworn Affidavit of Philadelphia Police Detective Matthew McDonald and, Exhibit C to the Affidavit, the sworn Affidavit of I.R.S. Special Agent Patrick T. Connelly and D.E.A. Deputized Agent Daniel O. Licklider, who is also with the Commonwealth of Pennsylvania. According to the Affidavits, which were presented to the Federal Magistrate on March 24, 1992, Detective McDonald had been investigating Eric Martinson and Christine Dickson since 1989 in regard to defendant Martinson's drug trafficking. (McDonald Affidavit, ¶1). A very extensive synopsis of the drug investigation is set forth in Exhibit C, the Connelly-Licklider Affidavit.[3] The synopsis included actual drug transactions, use of false personal identification, a vast continuous pattern of money laundering, warlock motorcycle gang membership by defendant Martinson, and the fact that chemical tests and a drug sniffing dog recently reacted positively to cash money deposited in defendants' account. (Connelly-Licklider Affidavit, ¶¶23, 84, 144-147, 150).

Beginning on March 18, 1992, Detective McDonald participated in the physical surveillance of Eric Martinson, along with Pennsylvania State Trooper Mark George who is also a Deputized D.E.A. Agent. Trooper George told Detective McDonald that on March 18, 1992, he saw Eric Martinson drive to a storage facility called the East Penn Self Storage facility. Trooper George and other agents reported to Detective McDonald that during a period of approximately one hour and twenty minutes,

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2. As a result of the search, illegal firearms, over one-half pound of methamphetamine, money, gold, and silver were found and seized in the storage locker.

3. This Affidavit is common to all the search warrants issued in this case, as well as the arrest warrants for both defendants.

defendant Martinson drove from his home on Valley Road in Lehigh County, Pennsylvania, to the storage facility and made only two brief stops of less than three minutes each. Throughout the drive, defendant Martinson made irregular turns into side streets, stopped in parking lots, and extended the vehicle to observe traffic in his vicinity. Detective McDonald knew from training and experience that these tactics were utilized by defendant Martinson as counter surveillance to determine if he was being followed. (McDonald Affidavit, ¶4).

Upon entering the East Penn Self Storage facility, defendant Martinson drove his vehicle to storage locker #85. Trooper George observed defendant Martinson enter the locker with a key, remain approximately two minutes, and then drive to the exit of the facility. When he came upon another vehicle, he turned around, went back towards the locker, waited briefly, then again drove to the exit and left alone. (McDonald Affidavit, ¶¶5, 6).

Defendant Martinson was then observed driving southbound on Cedar Crest Boulevard, and was seen tossing torn pieces of paper out of his vehicle. Detective McDonald recovered as many pieces as he could and when taped together, the pieces of paper appeared to be two stock certificates for Harvivalous, Inc., a company of which Eric Martinson is the president and Christine Martinson is the secretary.

On his way back, defendant Martinson stopped at the offices of Dean Witter, a stock brokerage, in Allentown, Pennsylvania, where he stayed for more than one hour. He then went through a banking window of Meridian Bank before returning to his residence. (McDonald Affidavit, ¶¶7, 8).

Subsequent surveillance and a review of documents showed

that defendant Martinson also went to the East Penn Self Storage locker on March 21, 1992 and March 22, 1992. (McDonald Affidavit, ¶9). Trooper George also advised Detective McDonald that a review of the records of the East Penn Self Storage locker revealed that locker #85 is leased by Christine Lawson, a known alias of defendant Christine Dickson, who resides with defendant Martinson. Lawson had rented locker #85 for the period November, 1991 to June, 1992. (McDonald Affidavit, ¶¶9, 10, 11; and Attachments A & C).

Both defendants wove a tangled web whose object was to deceive. The illicit money laundering and related transactions set forth in great detail in the eighty-two pages of the Connelly-Licklider Affidavit are phenomenal both as to dollar amount and the sheer number of transactions. Such activities had to consume many of the waking hours of both defendants lives. By their very nature, these activities required extensive daily record-keeping. Neither defendant had a job or place of employment (Connelly-Licklider Affidavit, ¶138) and it would be logical to expect to find their true records hidden with other evidence at home or wherever the defendants might securely store things. The Connelly-Licklider Affidavit further states an opinion in Paragraph 8 that it is common for money launderers to maintain records of their financial transactions, customers, etc., and that these documents are commonly concealed in secure locations which are hidden from law enforcement authorities.[4]

Detective McDonald was familiar with defendant Martinson's drug dealing and related offenses. For anyone to drive in the manner defendant Martinson did would be highly unusual. To the trained eye of a seasoned investigator, such driving could only

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4. As noted, *infra*, opinions such as this are important factors for a reviewing court.

mean one thing, *i.e.*, defendant Martinson didn't want to be followed to a remote location where there were things pertaining to his illegal activities. This is reinforced by his obvious efforts to avoid being seen leaving the storage locker area. Driving while discarding pieces of stock certificates is also unusual and prohibited by law.[5] We may infer that defendant Martinson took the trouble and risk of littering in this fashion because he did not want the certificates found in his possession. The disposal of the stock certificates and visits to financial offices all took place not before but *after* opening the storage locker. This points to the storage locker as a source of the certificates and other necessary documents. We believe that from these and all the other facts there clearly was a fair probability that both Eric Martinson and Christine Dickson were storing documents or other contraband, or both, in locker #85 which was related to their criminal activity.

The affiant or other reliable person upon whom the affiant relied does not have to actually see the evidence in a particular place to establish a sufficient nexus between items to be seized and the place to be searched. A nexus may be established by direct observation or by normal inferences. *United States v. McKinney*, 758 F.2d 1036, 1043 (5th Cir. 1985); *United States v. Minis*, 666 F.2d 134, 139 (5th Cir. 1982), *cert. denied*, 456 U.S. 946. We also believe that none of the *Leon* exceptions to the good faith rule are present and that a reasonably well-trained officer would have believed probable cause was present. There has been no claim or evidence that the magistrate "wholly abandoned" his judicial role, or that the magistrate was misled by information in the warrant affidavit which the affiants knew was false or would have known

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5. Depositing waste paper on the highway is a summary offense under 75 Pa. C.S.A. § 3709. A highway includes any public road up to its boundary lines. 75 Pa. C.S.A. § 102.

was false. Nor can we say that the Affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Leon*, 468 U.S. at 923, 104 S.Ct. at 3421. The warrant and Affidavit also particularized the place to be searched and the things to be seized. All those involved acted reasonably and with good faith.

Accordingly, defendants' original suppression motion will be denied.

II. SUPPLEMENTAL OCTOBER 6, 1992 MOTION TO SUPPRESS

Defendants' Supplemental Motion to Suppress concerns the March 20, 1992 search warrant for property, buildings, and vehicles located at defendants' residence at R.D.2 Valley Road, New Tripoli, Pennsylvania; and warrants for storage facilities in Wisconsin and West Virginia; and various postal boxes. Defendants claim that the search warrants for these searches are similar to and improperly rely upon information obtained in the search of storage locker #85 in Emmaus, Pennsylvania. This is not so because the residence search warrant was issued before the storage locker #85 warrant. As discussed above, we have upheld the storage locker #85 search and there was nothing improper about it.

Defendants also claim that the information in the Search Warrant Affidavits is stale. This argument ignores the fully documented two-year pattern of extensive conduct that continued uninterrupted to within less than ten days of the execution of the warrants. There was no reason for the U.S. Magistrate Judge or this Court to believe that the defendants' lifestyle of substantial, continuous illegal activity would suddenly change or that either

defendant withdrew from the conspiracy. Longer time lags between incidents and the issuance of a search warrant are permitted in the case of "ongoing long-term criminal activity." *United States v. Fama*, 758 F.2d at 838.

Defendants additionally claim that the state agents involved in the investigation were "acting outside the scope of their authority" in conducting this investigation and their illegal and unauthorized conduct has tainted this entire investigation and requires suppression of all of the evidence seized. This ignores the hearing testimony that Agent Licklider and other agents in this case were all sworn in and deputized as D.E.A. Agents on January 23, 1992. Moreover, even if he had not been deputized, we can see no reason why Agent Licklider could not take part in this case. Agent Licklider — the Pennsylvania Attorney General's investigator — was investigating money laundering. The Pennsylvania Criminal Code, 18 Pa. C.S.A. § 5111(e)(3), reads in pertinent part:

> (3) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of subsection (a) or any series of related violations involving more than one county of the Commonwealth or involving more than one county of the Commonwealth and another state. No person charged with a violation of subsection (a) by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case and, if any such challenge

is made, the challenge shall be dismissed and no relief shall be available in the courts of the Commonwealth to the person making the challenge.

Subsection (a) of 18 Pa. C.S.A. § 5111 reads in pertinent part:

§5111. Dealing in proceeds of unlawful activities

(a) Offense defined - A person commits a felony of the first degree if the person, knowing that the property involved in a financial transaction represents the proceeds of unlawful activity, conducts a financial transaction which involves the proceeds of unlawful activity under any of the following circumstances:

(1) With the intent to promote the carrying on of the unlawful activity.

(2) Knowing that the transaction is designed in whole or in part;

(i) to conceal or disguise nature, location, source, ownership, or control of the proceeds of unlawful activity; or

(ii) to avoid a transaction reporting requirement under state or federal law.

Appendix B

State officers may assist federal officers in the execution of search warrants. 18 U.S.C. § 3105; *United States v. Cox*, 462 F.2d 1293, 1306 (6th Cir. 1972), *cert. denied*, 417 U.S. 918. Nevertheless, federal law and not state law governs the validity of searches and seizures. *United States v. Rickus*, 737 F.2d 360, 364 (3d Cir. 1984).

Accordingly, the supplemental suppression motion will be denied.

III. ISSUES RAISED AT THE JANUARY 6, 1993 COURT HEARING

At the January 6, 1993 court hearing, defendants claimed that the Search Warrant Affidavits contained "material misstatements on their face" and we permitted them to call and question Trooper Mark George and Agent Licklider, and cross-examine one government witness, I.R.S. Agent Pat Connelly, at the brief hearing. No one else testified and we are satisfied that no such patent misstatements are present and that nothing precludes the application of the *Leon* good faith doctrine. Our other findings are as follows.

Agent Licklider did not investigate defendants' activities at First Lehigh Bank until he spoke to bank employees on August 16, 1991. Defendants questioned how Paragraph 147 of the Connelly-Licklider Affidavit could refer to the use of a drug sniffing dog at that bank prior to that date. Agent Licklider testified that a drug sniffing dog was used to check cash deposits made by defendants on money deposit dates ranging from July 23, 1991 to December 6, 1991. The bank was suspicious and had set aside the previous cash deposits for the officers' use. This is consistent with the Affidavit and no other reading makes sense because the sniffing could not have taken place before that part of the investigation began.

Appendix B

An issue was informally raised about a number of photographs shown by Agent Licklider to Mary Anne Brunnell, a Branch Manager for First Lehigh Bank. Defendant Martinson was using the bank under the name of Clement Potter (Connelly-Licklider Affidavit, ¶¶73-83) and the bank furnished standard surveillance photographs of Potter to Agent Licklider, along with a copy of Potter's photo driver's license. These were then made into still-photos which Agent Licklider showed to the bank manager in August, 1991, along with one other photo Agent Licklider had obtained of defendant Martinson from another source. (Connelly-Licklider Affidavit, ¶23). Mary Anne Brunnell identified all of the photos as being the same person she had regularly dealt with. Under the circumstances, we do not believe that use of a photo spread was even required. Moreover, any suggestive effect caused by a brief view sixteen months ago of this one non-bank photograph is more than offset by the reliability of the bank's other photos and Mary Anne Brunnell's familiarity with her customer, defendant Martinson. A review of the factors in *Mason v. Brathwaite*, 432 U.S. 98, 114-117, 97 S.Ct. 2243, 2253-54, 53 L.Ed.2d 140 (1977), shows that under a totality of the circumstances there does not exist "a very substantial likelihood of irreparable misidentification."

Trooper George testified that the officers knocked and announced they had a search warrant before entering the defendants' residence on Valley Road in New Tripoli. Christine M. Dickson came to the door and let the officers in at which point they arrested her. An immediate, limited rapid sweep was made for the sole purpose of seeing if other persons were present. Both officers were aware of the arrest warrant for defendant Dickson and search warrant which arrived minutes later in the custody of Special Agent Pat Connelly. The officers properly arrested defendant Dickson since they knew of the warrant. Fed. R. Crim. P. 4(d)(3);

United States v. Watson, 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976).

The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest. *Maryland v. Buie,* 494 U.S. 325, 327, 110 S.Ct. 1093, 1094-95, 108 L.Ed.2d 276 (1989). The actions of the officers are certainly reasonable under the circumstances. "It is generally left to the discretion of the executing officers to determine the details of how best to proceed with the performance of a search authorized by a warrant." *Dalia v. United States,* 441 U.S. 238, 257, 99 S.Ct. 1682, 1693, 60 L.Ed.2d 177 (1978). Furthermore, as the court said in *United States v. Hepperle,* 810 F.2d 836, 839, *cert. denied,* 483 U.S. 1025 (8th Cir. 1987):

> Nothing in the fourth amendment or Rule 41 requires that the search warrant be physically present prior to commencing the search. *Katz v. United States,* 389 U.S. 347, 355 n.16, 88 S.Ct. 507, 513 n.16, 19 L.Ed.2d 576 (1967); *United States v. Marx,* 635 F.2d 436, 441 (5th Cir. 1981) (failure to deliver copy of search warrant to party whose premises were searched until day after search did not invalidate search in absence of showing of prejudice; violations of Rule 41(d) essentially ministerial in nature); *United States v. McKenzie,* 446 F.2d 949, 954 (6th Cir. 1971) (absence showing of prejudice, irregularities in Rule 41(d) procedures do not void an otherwise valid search); *United States v. Woodring,* 444 F.2d 749, 751 (9th Cir. 1971) (Rule 41(d) requires officers to serve copy of warrant upon person searched, but does not

> require that this be done before search commences).

In a Supplemental Memorandum filed at the guilty pleas in open court on January 7, 1993, both counsel also maintain that there was no specific information or probable cause for the search of defendants' New Tripoli residence[6] and storage locker #135. Defendants' residence address is clearly spelled out in Paragraphs 83 and 136 of the Connelly-Licklider Affidavit. We have already pointed out that the phenomenal size and sophisticated nature of defendants' schemes required extensive, daily record-keeping and their lack of employment made it logical to expect to find their true illicit records and other evidence hidden at home or wherever defendants might securely store things. These facts are consistent with and support the opinion in Paragraph 8(g) of the Connelly-Licklider Affidavit:

> That it is common for persons involved in large-scale narcotics trafficking to maintain evidence relating to their obtaining, secreting, transfer, concealment, and/or expenditure of narcotics proceeds, such as: large amounts of currency, financial instruments, precious metals and gemstones, jewelry, books, records, invoices, receipts, records of real estate transactions, bank statements, and related records, credit, money orders, bank drafts, cashier's checks, bank checks, safe deposit box keys, money wrappers, and other evidence of financial transactions. These items are

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6. The defendants also cited a lack of probable cause for the search of storage locker #85 which we have already discussed.

> maintained by the narcotics traffickers within their residences, their businesses, the residences of relatives and associates, safe deposit boxes, and/or other locations over which they maintain dominion and control over.

An agent's expert opinion is an important factor for a judge to consider in reviewing a search warrant affidavit. *United States v. Fama*, 758 F.2d at 838; *United States v. Foster*, 711 F.2d 871, 878 (9th Cir. 1983). In view of the facts and opinion concerning common practices of drug defendants, it is the absence of any reference by defendants to their home address in their dealings that further points to defendants' home as a repository of records, contraband, or other evidence of their crimes.

Indeed, defendants took great pains to shield their true residence by using private mail box drops for their activities with such diverse addresses as: 3650 Nazareth Pike, Bethlehem, PA; 1231 Airport Road, Allentown, PA; 4676 Broadway, Allentown, PA; The Ellipse, Mt. Laurel, NJ; 603 Colonial Avenue, Sterling, VA; and other locations. When specifically asked by a bank employee if he resided in New Tripoli, defendant Martinson denied it and said he lived in Philadelphia. (Connelly-Licklider Affidavit, ¶97). The residence was purchased in another's name and reconveyed through a series of transfers to defendant Dickson. (Connelly-Licklider Affidavit, ¶¶126-132). All these efforts hampered efforts to locate defendants. (Connelly-Licklider Affidavit, ¶142). When defendants lack of jobs or a place of employment is taken into account, their home becomes the focus of a process of elimination.

As notes, a sufficient nexus between the items to be seized and

the place to be searched may be established by direct evidence or by inferences. *United States v. McKinney,* 758 F.2d at 1043. In addition, "personal identification and bank records are precisely the sorts of items which people tend to keep at home among their personal papers and effects." *McKinney* 758 F.2d at 1043; *United States v. Maestas,* 546 F.2d 1177, 1180 (5th Cir. 1977). As the court said in *United States v. Malin,* 908 F.2d at 165:

> Concededly, Stallard's complaint did not directly link the marijuana to the house. Direct evidence, however, is not necessary to a probable cause determination. *See, e.g., United States v. Angulo-Lopez,* 791 F.2d 1394, 1399 (9th Cir. 1986). "In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical, they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States,* 338 U.S. 160, 175, 69 S.Ct. 1302, 1310, 93 L.Ed. 1879 (1949), *quoted in Gates,* 462 U.S. at 231, 103 S.Ct. at 2328. A judge making a probable cause determination "need not determine that the evidence sought is *in fact* on the premises to be searched . . . or that the evidence is more likely than not to be found where the search takes place. . . . [He] need only conclude that it would be reasonable to seek the evidence in the place indicated in the affidavit." *United States v. Peacock,* 761 F.2d 1313, 1315 (9th Cir.), *cert. denied,* 474 U.S. 847, 106 S.Ct. 139, 88 L.Ed.2d 114 (1985)

> (citations omitted) (emphasis in original). In reaching his conclusion, a judge "is entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense." *Angulo-Lopez,* 791 F.2d at 1399. *Accord Rambis,* 686 F.2d at 624.
>
> . . . To provide probable cause, however, a complaint for a search warrant "need only allege specific facts establishing a reasonable probability that the items sought are likely to be at the location designated; the [complaint] need not also negate every argument that can be asserted against that probability." *United States v. Rambis,* 686 F.2d 620, 623 (7th Cir. 1982). *Accord United States v. Fama,* 758 F.2d 834, 838 (2d Cir. 1985) ("The fact that an innocent explanation may be consistent with the facts alleged . . . does not negate probable cause.

In *United States v. McKinney,* 758 F.2d at 1044, an agent's opinion, coupled with a common sense inference, was sufficient to establish a nexus between items sought and a building. Taking into account the applicable law, the expert opinions, the sworn facts, and logical inferences, there was a fair probability that false identification documents, money laundering records, and other contraband would be found in the defendants' residence. Furthermore, as we have already discussed, none of the *Leon* exceptions to the good faith rule are present in this case and a reasonably well-trained officer would have believed probable cause was present. All those involved exhibited good faith. We

believe that the March 24, 1992 search warrant and search of storage locker #135, in Whitehall, Pennsylvania are justified under similar principals, however, since the government does not intend to use anything seized in the search at the criminal trial, we need not address this issue.

An appropriate Order follows.

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CRIMINAL NO. 92-00228-01 & 02

UNITED STATES OF AMERICA

v.

ERIC C. MARTINSON,
a/k/a "Clement B. Potter,"
a/k/a "Lyle Louden,"
a/k/a "James F. Corbett,"
a/k/a "Kenneth E. Helton,"
a/k/a "Donald J. Monroe,"
a/k/a "Russell J. Harding,"
a/k/a "Joseph Steven Rafferty"
a/k/a/ "Derrick A. Walton,"
a/k/a "Scott Peter Ryan,"
a/k/a "Amos W. Frye,"
a/k/a "Howard M. Johnson,"
a/k/a "Thomas Lee,"
a/k/a "Lionel K. Lawson,"
a/k/a "Abe Golden," and
CHRISTINE M. DICKSON,
a/k/a "Cheryl K. Nielson,"
a/k/a "Carol Miller,"
a/k/a "Christine Martinson,"
a/k/a "Kristen Ann Lawson,"
a/k/a "Kristen Ann Corbett,"
a/k/a "Candice Ann Keiper"

Appendix B

ORDER

AND NOW, this 19th day of January, 1993, defendants' Motion for Suppression filed June 5, 1992 and Supplemental Motion for Suppression filed October 6, 1992 are BOTH DENIED.

BY THE COURT

s/ Franklin S. Van Antwerpen
Franklin S. Van Antwerpen, U.S.D.J.

APPENDIX C—APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT WITH ATTACHMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF *PENNSYLVANIA*

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

CASE NUMBER: *92-0287-M*
R-92-26M

In the Matter of the Search of
(
storage locker #85 located at the East Penn Self Storage facility, Chestnut and Allen Streets, Emmaus, PA (as more fully described in Attachment A and photograph attached hereto)

I *Matthew McDonald,* being duly sworn depose and say:

I am a *Deputized DEA agent* and have reason to believe that on the property or premises known as *storage locker #85 located at the East Penn Self Storage facility, Chestnut and Allen Streets, Emmaus, PA (as more fully described in Attachment A and photograph attached hereto)* in the *Eastern* District of *Pennsylvania* there is now concealed a property, namely *See Attachment B* which is *evidence of the commission of criminal offenses, contraband, fruits of crime, and used as a means of committing criminal offenses (See attached Affidavit)* concerning a violation of Title *18, 31, 42* United States code, Section(s) *371, 1956(a)(1), 1957(a) 5324, 408(a)(7), and (a)(8).* The facts to support a finding of Probable Cause are as follows:

See attached Affidavit of Detective Matthew McDonald, DEA [stamped]

Appendix C

Continued on the attached sheet and made a part hereof.

s/ Matthew McDonald
MATTHEW MCDONALD
DEA

Sworn to before me, and subscribed in my presence
3/24/92 5:15 P.M. at *Allentown, PA*

s/ Arnold C. Rapoport
ARNOLD C. RAPOPORT
U.S. MAGISTRATE JUDGE

Appendix C

"ATTACHMENT"

* * *

"Lawson" rented locker #85 for the period November 1991 to June 1992.

11. Based on the above-stated facts, including those contained in Attachment C, I believe there is probable cause to believe that inside storage locker #85, East Penn Self Storage, Chestnut and Allen Streets, Emmaus, PA, there are stored documents and other items as described in Attachment C, which is incorporated herein by reference.

12. Therefore, I respectfully request that a Search Warrant be issued for storage locker #85, East Penn Self Storage, Emmaus, PA, for the items described in Attachment B.

s/ Matthew McDonald
MATTHEW MCDONALD
Detective, Philadelphia Police Department
Deputized Drug Enforcement Administration Agent
Violent Traffickers Project

Sworn and subscribed to before me this 29 day
of March, 1992
at Allentown, PA.
s/ Arnold C. Rapoport
U.S. Magistrate